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VENUE IN THE UNITED STATES DISTRICT COURT.

VENUE AND JURISDICTION DISTINGUISHED.

VENUE must first be carefully and accurately distinguished from jurisdiction. "Jurisdiction," said Justice Brown,[1] "is the power to adjudicate a case upon the merits and dispose of it as justice may require." Venue has reference merely to the place of the suit. Jurisdiction is a question of the power of a court; venue, of locality. Jurisdiction controls the judicial capacity to hear the case; venue answers the only question of where the case should be heard.[2] The jurisdiction of the United States District Court concerns the various classes of cases that this court can decide, and defines and limits the powers of the United States District Court as a part of the judicial machinery of the Federal government. It is only after the question of the jurisdiction of the United States District Court is answered in the affirmative that the question of venue ever arises. Then the geographical issue must be determined of where the suit is to be brought—the venue. It is obvious that if the United States District Court can not entertain jurisdiction of a case, this ef-

[1] The Resolute, 168 U. S. 437, 18 Sup. Ct. 112, 42 L. Ed. 533.

[2] While only the U. S. District Court is the subject of inquiry in this article, the distinction between jurisdiction and venue is important also in State Courts. Thus, the Virginia Statutes control the jurisdiction of the Virginia Circuit Courts and then specify in which county the suit is to be brought. If the jurisdiction of the Circuit Court be here conceded, whether the case must be brought in the Circuit Court of Nelson County or in the Circuit Court of Albemarle County is purely a question of venue.

fectively stifles any question as to venue. Some writers use the term "jurisdiction over the subject matter," instead of jurisdiction; while "jurisdiction over the person" is employed as the equivalent of venue. The terminology is open to many obvious objections, particularly in view of the fact that the jurisdiction of the United States District Court depends in some cases solely on the subject matter of the litigation, while in others it is entirely controlled by the citizenship of the litigants.

The most important legal difference arising from the distinction between jurisdiction and venue is that no case can be tried in the United States District Court unless this case falls within the Congressional grant of judicial power to that court, which grant must in turn be within the limits of the judicial power of the Federal Government as outlined by Article 3, § 2, par. 1, of the United States Constitution. Unless this requirement is strictly fulfilled, even with the consent of the parties, or even at their insistent request, the United States District Court is powerless to hear the case.[3] When the United States District Court has no jurisdiction, therefore, under the Federal statutes, this can not be cured by any waiver by the parties to the controversy. Venue, on the other hand, is merely a personal privilege, which, if waived by the parties, can not be questioned by the judge, and this is true even though the venue is manifestly improper.[4] If the question of venue is properly raised, however, and the venue is held improper, then this disposes solely of the question of locality and leaves the disappointed litigant free to bring the suit in the United States District Court in another locality (district); and if he does this, the question of venue as to the latter locality (district) may be again raised and decided. The question of jurisdiction, or the power of the court, is always before the court, it may be raised by the court without an objection or even a suggestion from either litigant or counsel. The power to dismiss a suit "at any time after such suit has been brought" when "it shall appear to the satisfaction of the said district court" that the suit is not properly within its jurisdiction is ex-

[3] Heigler *v.* Faulkner, 127 U. S. 482, 8 Sup. Ct. 1203, 32 L. Ed. 310.
[4] In re Moore, 209 U. S. 490, 28 Sup. Ct. 585, 52 L. Ed. 904.

pressly given by § 37 of the Federal Judicial Code.[5] When the court has jurisdiction of the case, however, the question of venue must be specifically raised and presented to the court by a litigant who has not previously waived this right. The court is then called upon to decide whether the case is triable in the United States District Court of that locality (district), as distinguished from the United States District Court of another locality (district).[6]

District the Geographical Unit.

Sections 69-115 of the Judicial Code divide the United States into geographical units known as districts and § 1 of this Code provides that "in each of the districts" there shall be a United States District Court. This division of the country into districts is purely arbitrary. No district, however, cuts across the lines of two States so as to include a part of one State and a part of another. Some of the smaller States, Delaware, and Rhode Island, for example, constitute each a single district. Texas, though, is divided into four districts, Tennessee into three, Virginia into two. These districts are designated according to the geographical position occupied by them in the State. Thus, the eastern half of Virginia is known as the Eastern District of Virginia, while the western half of the State makes up the Western District of Virginai. The United States District Court sitting in the former district is known as the United States District Court for the Eastern District of Virginia; sitting in the latter, it is the United States District Court for the Western District of Virginia. In some of the States, for purposes of convenience, a single district is further divided into two or more divisions. Thus, the eastern district of Tennessee is divided into the Southern, Northern, and Northeastern Divisions of said district. By § 58 of the Judicial Code, any civil case, on stipulation of the parties, may by order of the judge, be transferred "to the court of any other division of the same district."

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[5] See Morris *v.* Gilmer, 129 U. S. 315, 9 Sup. Ct. 289, 32 L. Ed. 690.

[6] Ex parte Wisner, 203 U. S. 449, 27 Sup. Ct. 150, 51 L. Ed. 264.

VENUE IN CRIMINAL CASES.

So striking is the importance of venue in criminal cases that the most far-reaching provisions on this subject are found in the Federal Constitution. The Sixth Amendment provides that the trial shall be in the State and district in which the crime is committed. When the crime is not committed "within any state," then Art. 3, § 2, par. 3, of the United States Constitution gives Congress power to control the venue. In pursuance of this power, Congress has enacted "The trial of all offenses committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district where the offender is found or into which he is first brought." (Judicial Code, § 41.) [7] Thus, for a murder committed upon the high seas on a merchant vessel flying the United States flag, when the vessel first puts into Norfolk, the trial would properly be held in the United States District Court for the Eastern District of Virginia, sitting at Norfolk. The rights guaranteed by the Sixth Amendment to the Constitution have been still further safeguarded by § 40 of the Judicial Code providing that, in capital cases, the trial shall be had not only in the State and district, but also in the county, in which the offense was committed, "where that can be done without great inconvenience." Section 53 of the Judicial Code further provides "all prosecutions for crimes and offenses shall be had within the division of such district where the same were committed unless the court * * * shall order the cause to be transferred * * * to another division of the district." The student of criminal law is familiar with the difficulty of determining, in some cases, the locality of the offense.[8] Particularly is this true when an act is done in one district which takes criminal effect in another. A discussion of these problems, however, belongs

[7] An interesting case on the facts in this connection, though the opinion contains no discussion of the question involved, is U. S. *v.* Arwo, 19 Wall. 486, 22 L. Ed. 67.

[8] For an admirable discussion of this subject, see Clark and Marshall on Crimes, §§ 493-511. Interesting Federal cases are Barton *v.* U. S., 196 U. S. 283, 25 Sup. Ct. 243, 49 L. Ed. 482; Palliser *v.* U. S., 136 U. S. 257, 10 Sup. Ct. 1034, 34 L. Ed. 514.

more properly to works on criminal law. Some of these problems have been simplified, though, by § 42 of the Judicial Code. This provides that when a Federal offense is begun in one district and completed in another, the trial may be had, and the offender punished in either district, as if the crime had been wholly committed in such district.

VENUE IN CIVIL CASES INSTITUTED IN THE UNITED STATES DISTRICT COURT.

The provision of widest application on this subject is found in § 51 of the Judicial Code. This section distinguishes clearly between (1) cases in which jurisdiction is based "on the fact that the action is between citizens of different states" (the so-called "diverse citizenship cases," though this expression is not contained in the Federal Statutes) and (2) cases in which the jurisdiction of the United States District Court is not based on diverse citizenship. The section then provides that (subject to the exceptions contained in the six succeeding sections [§§ 52-57] of the Judicial Code) in cases not based on diverse citizenship, the proper venue is the district of the defendant; while in diverse citizenship cases, the suit may be brought "in the district of the residence of either the plaintiff or the defendant." It is thus clear that in cases not depending on diverse citizenship to confer jurisdiction, there is only one proper venue—the residence of the defendant; while in diverse citizenship cases, the plaintiff has an election of two districts either of which is proper —the district of the plaintiff or the district of the defendant.

An important qualification of the rule just stated, which greatly restricts the venue, is this: The terms plaintiff and defendant are used collectively and mean *all* the plaintiffs or *all* the defendants.[9] With but a single plaintiff and a single defendant, this principle is never called into operation, but with a plurality of litigants, it becomes tremendously important. Thus, when jurisdiction is not based on diverse citizenship, so that the venue must be based on the residence of the defendants, if there are

[9] Smith *v.* Lyon, 133 U. S. 315, 10 Sup. Ct. 303, 33 L. Ed. 635; McAuley *v.* Moody, 185 Fed. 144.

two or more defendants from different districts, then there is no district of the defendant, since there is no district of all the defendants, and hence no district in which the venue is proper. So that when a suit not based on diverse citizenship is brought against A. (of the Eastern District of Virginia) and B. (of the Western District of North Carolina) neither of these districts is the district of all the defendants and in neither district is the venue proper. Of course, if the defendants (however numerous) are all from the same district, suit can be brought in that district. In diverse citizenship cases, though the district may be that of either plaintiff or defendant, the same principles are applicable. So that if A. (of the Northern District of Florida) wishes to bring suit in the United States District Court based on diverse citizenship against B. (of the Western District of Virginia) and C. (of the Eastern District of North Carolina), then since there is no district common to all the defendants, the venue must be based on the district of the single plaintiff, and only the Northern District of Florida would be proper. Or suppose again, in a diverse citizenship case, A. (of the Northern District of Florida) and B. (of the Southern District of Georgia) wish to sue C. (of the Western District of Virginia) and D. (of the Eastern District of North Carolina). Here there is no district in which the venue is proper, for there is no district common either to all the plaintiffs or to all the defendants. If, however, in any of these cases any party is not indispensable, the suit may be dismissed as to such party and the venue will then be worked out on the basis of the remaining indispensable parties.[10] In determining the residence of corporations, the corporation is a citizen only of the State in which it is incorporated and not of the other States in which it does business.[11] When

[10] Schiffer *v.* Anderson, 146 Fed. 457, 76 C. C. A. 667; Ladew *v.* Tenn. Copper Co., 179 Fed. 245. See also Judicial Code, § 50, applicable both to actions at Law and suits in Equity, and the 39th Equity Rule applicable only to suits in Equity.

[11] So. Pac. Co. *v.* Denton, 146 U. S. 202, 13 Sup. Ct. 44, 36 L. Ed. 942; Freeman *v.* Amer. Surety Co., 116 Fed. 549; Railroad Co. *v.* Koontz, 104 U. S. 5, 26 L. Ed. 643; Ladew *v.* Tenn. Copper Co., 218 U. S. 357, 31 Sup. Ct. 81, 54 L. Ed. 1069. In So. Pac. Co. *v.* Denton, plaintiff resided in the Eastern District of Texas, the defendant was incorpo-

the State of the corporation is divided into more than one district, the district of the corporation is normally that in which the corporation has its head office. Thus, in a suit by A. (of Pennsylvania) and B. (of New York) against the X corporation (incorporated under laws of West Virginia, head office in the Northern District of West Virginia), the district in which the venue is proper is the Northern District of West Virginia, wheresoever else the corporation may be doing business.[12]

Since an alien is not a citizen of any district, the above principles do not apply in suits against aliens, whether these be natural persons or corporations. In such cases, if the proper jurisdictional facts exist, suit may be brought against the alien in any district in which process can be validly served on the alien defendant.[13] When, however, the alien is plaintiff, then the proper district is that of the defendant citizen of the United States, whether this defendant be a corporation or natural person.[14]

Another complication, rendering the practical problem of suitable venue still more difficult, is the service of process. Ordinarily federal process does not run out of the district in which it is issued. An *in personam* judgment can be obtained against a defendant, accordingly, only by serving such defendant in the district in which the suit is brought. The service of process on a natural person in any district in which he can be found pre-

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rated under the Laws of Kentucky, but was doing business in the Western District of Texas. Held, the Western District of Texas (being the district of neither plaintiff nor defendant) was not the proper venue.

Suppose a suit, based on diverse citizenship, brought by M. (of Portland, Maine) and the W. Company (incorporated under the laws of Vermont, principal office at Burlington) against P. (of Boston, Mass.). The W. Company does a large business at Portland. Here, though M. lives at Portland, this is not the district of the W. Co., though it "does business" there. Accordingly the district of the defendant P. is the only proper venue.

[12] Sweeny *v.* Carter Oil Co., 199 U. S. 252, 26 Sup. Ct. 55.

[13] Barrow S. S. Co. *v.* Kane, 170 U. S. 100, 18 Sup. Ct. 526, 42 L. Ed. 964; In re Hohorst, 150 U. S. 653, 14 Sup. Ct. 221, 37 L. Ed. 1211.

[14] Galveston, etc., Ry. Co. *v.* Gonzales, 151 U. S. 496, 14 Sup. Ct. 401, 39 L. Ed. 248. See also Ladew *v.* Copper Co., 218 U. S. 357, 31 Sup. Ct. 81, 54 L. Ed. 1069.

sents usually no legal difficulty. Service of process, however, on corporations presents this striking limitation: A corporation can validly be served only in a district in which it is "doing business." [15] Unless the corporation is "doing business" in a particular district, valid service of process in that district is impossible. Thus, the Y corporation (incorporated in Maryland) which is not doing business in the Western District of Virginia can not be served in this district though all the officers of the corporation may be present in Charlottesville. So that in a suit by A. (of Charlottesville) against the Y corporation (based on diverse citizenship), while the Western District of Virginia is technically the proper venue, the plaintiff, wishing to sue in the United States District Court, since the defendant could never be served in that district, would be driven to the defendant's district in Maryland. Accordingly, while a Virginia corporation does not become a citizen or inhabitant of the district of Maryland by doing business in Baltimore, in so far as the propriety of the venue is concerned, yet, in a suit against the corporation in Maryland (if that be the proper venue) the corporation is amenable to process in the district of Maryland. Though numerous cases involve that question, it is beyond the scope of this article to discuss what constitutes "doing business" in a district on the part of a corporation, which will render it liable to service of process in that district. The term, however, involves some continuity, a series of transactions in the line of the corporation's business rather than one or even more single and somewhat isolated and unrelated acts.[16]

In this connection should be emphasized, as has already been

[15] Conley *v.* Alkali Works, 190 U. S. 406, 23 Sup. Ct. 728, 47 L. Ed. 1113; Green *v.* Chicago, etc., Ry. Co., 205 U. S. 530. Suppose a suit by H. (of Virginia) against Q. (of Baltimore, Md.) and the Z. corporation (incorporated in Massachusetts, principal office in Boston, not doing business in Virginia). Here, the defendants being from different districts, the venue must be the district of the single plaintiff. But in this district (though the venue is proper) no service can be had on the Z. corporation. Hence there is for practical purposes, no suitable venue, and, unless this defect is waived, the plaintiff is denied entrance into the United States District Court.

[16] See Green *v.* Chicago, etc., Ry. Co., 205 U. S. 530; Peterson *v.* Ry. Co., 205 U. S. 364; Fitzgerald Co. *v.* Fitzgerald, 137 U. S. 98.

stated, that venue (as distinguished from jurisdiction) may be waived. When it is waived, however improper the venue may be, the court can not question its propriety and the parties waiving it thereby conclusively estop themselves from raising the question.[17] Such a waiver may be either express or implied, usually the latter. Objection to the venue (which virtually admits the jurisdiction of the United States District Court though it denies the propriety of the suit being brought in the United States District Court of that particular district) is in the nature of a plea in abatement. An appearance for that purpose is accordingly a special appearance of a highly technical character. It therefore follows that such an appearance for such an objection is proper only in the earliest stages of the suit. A defendant, then, who makes a general appearance can not afterwards question the venue.[18] Nor can a general and special appearance be combined, so that the defendant can not unite a plea to the merits, or even a general demurrer, with an objection to the venue.[19] The plaintiff, of course, waives his right to object to the venue by bringing the suit in the district in question. It would be absurd to permit a plaintiff to file a suit in the United States District Court in a specific district and then to question the propriety of the court whose aid he had invoked in the very district of his own selection.

VENUE IN CASES REMOVED TO THE UNITED STATES DISTRICT COURT.

As is well known, the United States District Court acquires jurisdiction not only when cases are originally filed therein, but also (in certain instances) when cases, orginally filed in a State Court, are removed by the defendant from such court to the United States District Court.[20] The defendant thus becomes

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[17] In re Moore, 209 U. S. 490, 28 Sup. Ct. 585, 52 L. Ed. 504.

[18] St. Louis, etc., Ry. Co. *v.* McBride, 141 U. S. 127, 11 Sup. Ct. 982, 35 L. Ed. 659; Ingersoll *v.* Covan, 211 U. S. 335, 29 Sup. Ct. 92, 53 L. Ed. 208.

[19] Jones *v.* Andrews, 10 Wall. 327, 19 L. Ed. 935; So. Pac. Ry. Co. *v.* Denton, 146 U. S. 202, 13 Sup. Ct. 44, 36 L. Ed. 942. See also Merchants, etc., Co. *v.* Clow, 204 U. S. 286.

[20] See Judicial Code, §§ 28-39.

dominus litis to the extent of selecting the forum of the case. This right the defendant can exercise in a proper case and the State Court must recognize it, even against the protestation of the plaintiff.[21] The conditions giving rise to this right, as well as the circumstances involved in its exercise, are not within the scope of this article. In general, the same considerations applicable to the venue in cases within the original jurisdiction of the United States District Court apply equally to cases of which this court acquires jurisdiction by removal from a State Court. There are some unique considerations, however, as to removal venue that seem to call for separate and special discussion. The two most important classes of cases falling within the removal jurisdiction of the United States District Court are cases involving federal questions and cases based on diverse citizenship.

Cases involving a federal question ("arising under the Constitution or laws of the United States") ordinarily involve no great difficulty. The only proper venue in such cases is the district of the defendant. The plaintiff's district, this being a case in which the jurisdiction is not based on diverse citizenship, is immaterial. Nor does the removing defendant (as is true of diverse citizenship cases) have to be a non-resident of the district in which the State Court in which the suit is filed is situated.[22] Only to the United States District Court of the district in which this State Court sits can the defendant remove the case—the United States District Court in all other districts is closed to him.[23] The defendant by the removal estops himself from questioning the venue.[24] But the plaintiff, by filing suit in the State Court does not estop himself from questioning the federal venue; he has consented to the venue of the State Court chosen by himself, but not to the venue of the federal court selected by the defendant.[25] Simply stated, then, the situation is this: The plaintiff can question the venue, usually by

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[21] Judicial Code, § 29.

[22] Judicial Code, § 28.

[23] Judicial Code, § 29.

[24] In re Moore, 209 U. S. 490, 28 Sup. Ct. 585, 52 L. Ed. 904.

[25] Ex parte Wisner, 203 U. S. 449, 27 Sup. Ct. 150, 51 L. Ed. 264. The Wisner and Moore cases cited in this note and the preceding note are both diverse citizenship cases; but the principles of estoppel are the same as in cases involving federal questions.

a "motion to remand" (the case to the State Court) filed in the United States District Court. This court then has to decide whether the district is the district of the defendant—the only proper venue. If this question is decided in the affirmative, the United States District Court retains the case and proceeds to adjudicate it. Should the question be decided in the negative, the United States District Court enters an order (from which no appeal can be taken) [26] remanding the case to the State Court from which it has been removed, which court then proceeds with the case.

In diverse citizenship cases, the question of removal venue is much more complicated. This is due chiefly to two causes: (1) Here the proper venue may be either the district of the plaintiff or the district of the defendant, using these terms collectively as before; [27] (2) only the non-resident defendant can remove,[28]—the defendant has no such right, if the district which includes the physical territory for which the State Court sits is the defendant's district. It should be noted that § 28 of the Judicial Code provides that the case should be removed "to the District Court of the United States for the *proper district.*" The proper district must be, as we have just seen, the district of either the plaintiff or defendant. In § 29 of this Code it is provided that the removal must be "into the (United States) District Court to be held in the district where such suit is pending" (in the State Court). This last provision is mandatory and cannot be waived.[29] The only district into which the suit can be removed is the district that includes the physical territory for which the State Court sits. Thus, Albemarle County, Virginia, is included within the Western District of Virginia. Accordingly suits filed in the Circuit Court of Albemarle County, removable from this State Court to the United States District Court, must be removed to the United States District Court for the Western District of Virginia. If this district be divided into divisions, the Judicial Code (§ 53) provides for a removal into the "United States District Court in

[26] Judicial Code, § 28.
[27] Judicial Code, §§ 28, 51.
[28] Judicial Cole, § 28.
[29] Ex parte State Ins. Co., 18 Wall. 417, 21 L. Ed. 904.

the division in which the county is situated from which the removal is made." Now, after § 29 has been fulfilled by a removal to the only district which its peremptory provision permits, then the question arises whether, as § 28 requires, this district is the *proper district,* according to the principles previously discussed. The requirement of § 29, however, being mandatory, is not waivable, and if the requirement is not fulfilled, the Federal Court takes no cognizance of the case. But if § 29 is carried out, then the propriety of the venue is, as in other cases, a personal privilege which the parties may freely waive.[30] When the territorial provision of § 29 and the propriety provision of § 29 are both satisfied, the venue cannot successfully be attacked. The question remains as to the situation when § 29 is satisfied but not § 28.

In such cases, the removing non-resident defendant, by the very act of removal, waives his right to question the venue.[31] This leaves, then, the plaintiff alone as a possible objector on this score. Does the plaintiff, by filing suit in the State Court sitting for territory included within the federal district, consent, on the removal of the case by the defendant, to the venue of the United States District Court for that district, when this district is not proper, because it is neither the district of the plaintiff nor the district of the defendant? Though some cases answered the question in the affirmative,[32] it was effectively and negatively answered by the United States Supreme Court in Ex parte Wisner, 203 U. S. 449, 27 Sup. Ct. 150, 51 L. Ed. 264.[33] In that case, W. (of Michigan) sued B. (of Louisiana) in the State Circuit Court of the city of St. Louis. B. removed the case to the United States Circuit Court (this court was abolished and its jurisdiction conferred on the United States District Court by the Judicial Code) for the Eastern District of Mis-

[30] In re Moore, 209 U. S. 490, 28 Sup. Ct. 585, 52 L. Ed. 904.

[31] In re Moore, 209 U. S. 490, 28 Sup. Ct. 585, 52 L. Ed. 904.

[32] See Rome Petroleum Co. *v.* Hughes, etc., Co., 130 Fed. 485, and cases cited. See also Vinal *v.* Continental Co., 34 Fed. 229; Morris *v.* Clark Construction Co., 140 Fed. 756; Amer. Finance Co. *v.* Bostwick 151 Mass. 19, 23 N. E. 656.

[33] See also Western Loan, etc., Co. *v.* Min. Co., 210 U. S. 368, 28 Sup. Ct. 720, 52 L. Ed. 1101; Kreigh *v.* Westinghouse Co., 214 U. S. 249, 253, 29 Sup. Ct. 619, 53 L. Ed. 984.

souri. W. (the plaintiff) moved the Federal Court to remand the case to the State Court. On the lower court's refusing to grant the motion, the United States Supreme Court held a mandamus was proper to compel the remanding of the case.[34] In re Moore, 209 U. S. 490, 28 Sup. Ct. 585, 52 L. Ed. 904, 14 Ann. Cas. 1164, affirmed the holding of the Wisner case that the plaintiff did not waive his right to question an improper venue on the removal of the case to the Federal Court merely by filing suit in the State Court. But in the Moore case, the plaintiff went much further and filed in the Federal Court an amended petition and various stipulations entered into by counsel on both sides. Later the plaintiff filed a motion to remand in the Federal Court on the same ground as in the Wisner case—the district was neither that of the plaintiff nor that of the defendant. The United States Supreme Court held that by filing the amended petition and the stipulations in the Federal Court after the removal, the plaintiff acknowledged the right of the Federal Court in that district to try the case and thereby waived effectually his right to question the venue.[35] These two cases (the Wisner case and the Moore case) are probably the leading cases on removal venue, and in practically all the cases subsequent to them, they are cited and discussed.[36]

A remarkable conflict of views has sprung up as to removal venue in suits brought by an alien in a State Court against a citizen of one of the States of the United States, such defendant being either a natural person or a corporation. It is perfectly clear, in such cases, that if the State Court sits in the defendant's

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[34] See Ex parte Harding, 219 U. S. 363, 31 Sup. Ct. 324, 55 L. Ed. 352, 37 L. R. A. (N. S.) 392, qualifying and disapproving the Wisner case as to the use of mandamus in this connection.

[35] The Moore case repudiated the unfortunate dictum of Fuller, C. J. in the Wisner case (203 U. S. Page 460): "Jurisdiction of the suit could not have obtained even with the consent of both parties."

[36] These cases may be found in Decennial Digest, "Removal of Causes" (Key. No.), § 12. As examples of such cases, see Ex parte Harding, 219 U. S. 363, 31 Sup. Ct. 324, 55 L. Ed. 352, 37 L. R. A. (N. S.) 392; Western Union Tel. Co. *v.* L. and N. Ry. Co., 201 U. S. 932. See also St. Louis, etc., Ry. Co. *v.* Kiser (Tex. Civil Appeals), 136 S. W. 852, in which the action of the State Court in declining to grant removal on the ground of improper federal venue is upheld.

district, the defendant cannot remove the case to the United States District Court because he is not a non-resident defendant, since the jurisdiction of this court is based on diverse citizenship. The State Court cannot sit in the district of the plaintiff, for the alien has no district. But suppose the State Court sits in a district other than the district of the defendant and the case is removed by the defendant to the United States District Court. This district is manifestly the district of neither the plaintiff (who has no district) nor the defendant. Can the alien plaintiff successfully move on the ground of the impropriety of the venue to remand the case to the State Court? Sagara *v.* Railway Co., 189 Fed. 220, holds that he can;[37] Decker *v.* Railway Co., 189 Fed. 224 (the very next case in volume 189 of the Federal Reporter) holds that he cannot.[38] If the Sagara case be upheld, its effect in such cases would be to prevent absolutely the defendant ever from removing a case from a State Court to the United States District Court without the consent of the alien plaintiff. It is believed that the decision of the Decker case (which contains in small compass an unusual incisive discussion of removal venue) announces the better rule. This opinion is quoted and approved in Smellie *v.* Railway Co., 197 Fed. 641. The question is quite important in States in which corporations chartered in a different State employ large numbers of aliens in occupations that give rise to frequent suits for personal injuries.

VENUE IN EXCEPTIONAL CASES.

In a number of instances, special provision is made in the Federal Statutes as to venue in special cases covered by these statutes. Thus, the district is the Federal geographical unit, and two districts in the same state are usually for purposes of venue as foreign to one another as two districts in two separate states. Section 52 of the Judicial Code, however, provides that when there are two or more defendants, residing in different

[37] See also Mahopoulos *v.* Chicago, etc., Ry. Co., 167 Fed. 165; Odhner *v.* Nor. Pac. Ry. Co., 188 Fed. 507.

[38] See also Barlow *v.* Chicago, etc., Ry. Co., 164 Fed. 765; Bagenas *v.* So. Pac. Co., 180 Fed. 887.

districts of the same state, suit may be brought in either district. The succeeding section (§ 53) provides, when a district is divided into divisions, that in suits not of a local nature against a single defendant these must be brought in the division of such defendant; but if there are two or more defendants residing in different divisions of the same district, suit "may be brought in either division." Sections 54 and 55 provide as to different districts in the same state in suits of a local nature—usually suits concerning real estate. Section 56 confers on receivers in certain cases powers over property in any district of the circuit in which the district of the receiver's appointment is situated.

Of unusual importance is § 57 of the Judicial Code (the last of the exceptional "six succeeding sections" provided for in § 51) which is concerned with the enforcement of *in rem* claims affecting only the *res* or property and affixing no personal liability upon the defendant.[39] While the proper jurisdictional facts must exist to give the United States District Court jurisdiction (diverse citizenship cases are most frequent), the venue here is determined entirely by the location of the *res* or property, suit being brought in the district in which the property is situated without regard to the residence of either plaintiff or defendant, neither of whom need be a resident of the district.[40] The operation of this section has been strictly limited to the enforcement of pre-existing claims to definite property, and attempts to create claims or to enforce personal obligations under this section have met with prompt rebukes from the courts. How strictly the courts adhere to this is admirably shown by the cases of Goodman *v.* Niblack, 102 U. S. 556, 26 L. Ed. 229, and Fayerweather *v.* Rich, 89 Fed. 385. In the Goodman case, a bill in equity was filed to enforce a claim or lien upon a *specific fund,* the court holding this to be a true *in rem* proceeding

[39] "Any suit commenced in any District Court of the United States to enforce any legal or equitable claim to, or to remove any incumbrance or lien or cloud upon the title to, real or personal property within the district where such suit is brought."

[40] Greeley *v.* Lowe, 155 U. S. 58, 15 Sup. Ct. 54, 39 L. Ed. 69; Ladew *v.* Tenn. Copper Co., 179 Fed. 245.

coming within the statute in question. The Fayerweather case was a suit by heirs against trustees to recover a residue in the hands of the trustees but no specific real or personal property was sought to be affected. Therefore, the suit was held not within the statute. Suits to abate nuisances [41] and suits to compel specific performance of contracts to convey property [42] are likewise personal actions not within the purview of the statute. Partition suits,[43] however, suits to remove clouds upon titles [44] and suits to foreclose mortgages [45] are proceedings to enforce definite pre-existing claims to specific property and thus come clearly within the statute. Elaborate provisions as to procedure are found in this section, but these lie beyond the scope of this article.

The admiralty jurisdiction of the Federal Courts is unique, in some cases exclusive, while procedure in such cases differs widely from that in ordinary civil suits. It is well settled that the general provisions of the Federal Statutes as to venue in the United States District Court (particularly § 51 of the Judicial Code) do not apply to admiralty cases. Thus a libel *in personam* may be maintained "wherever a monition can be served upon the libelee, or an attachment made of any credits of his." [46]

There are many Federal Statutes applicable each only to specific cases with which the statute deals, in which provision is made as to *venue*. Only a few of these need be mentioned. Such, for example, are the Sherman Antitrust Act,[47] the Em-

[41] Ladew *v.* Tenn. Copper Co., 218 U. S. 359, 31 Sup. Ct. 81, 54 L. Ed. 1069.

[42] Municipal, etc., Co. *v.* Gardner, 62 Fed. 954. The same is true when specific performance for payment of the purchase price is sought by the vendor. Nelson *v.* Husted, 182 Fed. 921. So as to rescission suits by vendee. Camp *v.* Bensol, 203 Fed. 913. But suit might be maintainable under J. C., § 57, on contracts giving a lien on property. Texas Co. *v.* Central, etc., Co., 194 Fed. 1; Citizens, etc., Co. *v.* Ill. Cent. Ry. Co., 205 U. S. 46, 27 Sup. Ct. 425, 51 L. Ed. 703.

[43] Greeley *v.* Lowe, 155 U. S. 58, 15 Sup. Ct. 24, 39 L. Ed. 69.

[44] Dick *v.* Foraker, 155 U. S. 404, 15 Sup. Ct. 124, 39 L. Ed. 201.

[45] Seybert *v.* Shamokin, etc., Ry. Co., 110 Fed. 810.

[46] In re Louisville Underwriters, 134 U. S. 488, 10 Sup. Ct. 587, 33 L. Ed. 991.

[47] 26 Stat. 209, c. 647; U. S. Comp. St. 1901, p. 3200.

ployers Liability Act,[48] and the Deficiency Appropriation Bill of October 22, 1913, abolishing the Commerce Court and conferring its jurisdiction on the United States District Court. Sections 43-49 of the Judicial Code make special provisions as to venue: § 43 in suits for penalties and forfeitures; § 44 in suits for internal revenue taxes; § 45 as to seizures; § 46 in proceedings for the condemnation of insurrectionary property; § 47 in forfeiture proceedings in cases of vessels entering a port of entry closed by the President, or in cases of insurrection; § 48 in suits brought for the infringement of letters patent.

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[48] Act of April 22nd, 1908, c. 149, 35 Stat. 65, amended by Act of April 5th, 1910, c. 143, 36 Stat. 291, U. S. Comp. St. 1901, 1911 Supp. p. 1324.